STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1612

Tyler Grant Thompson,
Respondent,

vs.

Arlen Britton,
Appellant.

Filed April 24, 2023
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Scott County District Court
File No. 70-CV-22-10269

Tyler Grant Thompson, Savage, Minnesota (pro se respondent)

David L. Ludescher, David T. Estle, Grundhoefer & Ludescher, P.A., Northfield, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Connolly, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's grant of a harassment restraining order (HRO), arguing that the record does not support the district court's finding of harassment and that the HRO violates his First Amendment rights. We affirm in part, reverse in part, and remand.

FACTS

On August 19, 2022, respondent Tyler Grant Thompson petitioned for an HRO against appellant Arlen Britton. Thompson's social worker assisted him with the petition. Thompson alleged that Britton regularly made phone calls to the police, Thompson's treatment center, and Thompson's social worker, accusing Thompson of "assault, sexual assault, theft and drug use." Thompson noted that the district court previously dismissed a temporary HRO against Britton and alleged that "as soon as the previous HRO was dismissed [Britton] started right back up . . . trying to get [Thompson] in trouble [with] the law." Thompson also alleged that Britton "has been trying to locate [him] through various means." The district court granted a temporary HRO, finding that Britton monitored, threatened, and frightened Thompson.

On September 12, 2022, the parties appeared pro se for an evidentiary hearing. Thompson, Thompson's social worker, and Britton testified at the hearing. The district court issued an HRO against Britton for a period of two years, finding that he "harassed [Thompson] by contacting various people and places associated with [Thompson] and making allegations of criminal behavior against [Thompson]." The district court ordered Britton to have no direct or indirect contact with Thompson, prohibited Britton from being within 100 feet of Thompson's residence, and prohibited Britton "from speaking about [Thompson] to others."

Britton appeals.[1]

DECISION

Britton contends that the evidence was insufficient to support a finding of harassment and that the HRO violates his rights under the First Amendment by broadly prohibiting him from "speaking about [Thompson] to others." We address each contention in turn.

I.

The district court may grant an HRO if "the court finds . . . that there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2022). Harassment includes "repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another." Minn. Stat. § 609.748, subd. 1(a)(1) (2022).

We review a district court's grant of an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). "[T]his court will reverse the issuance of a restraining order if it is not supported by sufficient evidence." *Id.* at 844. The district court's findings of fact "shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01.

[1] Thompson did not file a brief, and this court ordered that the matter proceed under Minn. R. Civ. App. P. 142.03, which provides that if the respondent fails to file a brief, the case shall be determined on the merits.

During the hearing, Thompson's social worker testified that in August 2022, Britton called him and claimed that Thompson was "out doing these illegal things" and had "tried to kill [him]." The social worker testified that there "was no substance to [the call] other than trying to get [Thompson] in trouble." Thompson testified that although he had not received any calls directly from Britton, the police had been called to his residence after Britton reported that Thompson had "vandalized [Britton's] car and another guy's car."

Britton testified that he had called Thompson's treatment center "to ask them about how they conduct their treatment, what they subject patients to or clients to." Britton acknowledged that he had made "reports" about Thompson pertaining to "the vandalism of a car and . . . beer and marijuana procurement." Britton denied reporting that Thompson vandalized his car or committed sexual assault, denied calling Thompson's therapist, and denied speaking to Thompson's treatment center about Thompson directly. The district court's ultimate finding of harassment indicates that it believed Thompson and his social worker, and not Britton. We defer to that implicit credibility determination.

Britton argues that the district court's finding of harassment is in error because Thompson admitted that Britton "had never directly done anything" to him. But the statutory definition of harassment does not require direct contact or communication between the actor and the intended target. *See State v. Egge*, 611 N.W.2d 573, 575 (Minn. App. 2000) (determining that harassment occurred when contact with the intended target "was completed by a third party after being instigated or initiated by" the actor), *rev. denied* (Minn. Aug. 15, 2000); *see also State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975) (determining, in the context of a terroristic threats charge, "that a defendant need not

directly communicate the threat to the intended victim to be guilty of making a criminal threat").

Britton also argues that the finding of harassment is in error because the district court did not conclude that Britton's communications affected Thompson in any way, which, according to Britton, "is a necessary element of harassment as defined by the statute." Britton misreads the statute, which requires *either* acts that "have a substantial adverse effect" *or* that "are intended to have a substantial adverse effect" on the safety, security, or privacy of another. Minn. Stat. § 609.748, subd. 1(a)(1). Thus, it was not necessary to prove that Britton's acts had a substantial adverse effect on Thompson's safety, security, or privacy so long as the record established that Britton intended his acts to have such an effect.

Because intent is a state of mind, it is "generally proved circumstantially—by drawing inferences from the defendant's words and actions in light of the totality of the circumstances." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). A fact-finder "may infer that a person intends the natural and probable consequences of his actions." *Id*. Britton testified that he called a social worker "to report some concerning conduct" regarding Thompson. Thompson's social worker testified that Britton called him "to complain" about Thompson and to warn that Thompson "was doing illegal things, felonious things" while in treatment. This record supports the district court's implicit inference that Britton acted with intent to have a substantial adverse effect on Thompson's safety, security, or privacy.

Finally, Britton asserts that "the district court did not diligently apply the rigor of judicial neutrality and fairness in this case." Specifically, Britton asserts that the hearing was unfair because the district court examined Thompson's witness, acted as an "investigator," denied Britton the opportunity to cross-examine Thompson, and "showed a distinct difference in how it treated the parties."[2] Britton does not support those assertions with legal argument or authority. Mere assertions of error unsupported by legal argument or authority are waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). We do not discern prejudicial error necessitating reversal.

Moreover, an appellate court presumes that the district court discharged all judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). And a district court may question witnesses. Minn. R. Evid. 614(b) (allowing a district court to question witnesses called by a party); *see also Olson v. Blue Cross & Blue Shield*, 269 N.W.2d 697, 702 (Minn. 1978) ("It is within the discretion of the [district] court to question a witness called by a party."). A district court has a duty to "search for justice," and questioning a witness may assist the district court in performing this function. *Olson*, 269 N.W.2d at 702. The transcript shows that the district court's inquiries were "not so strong as to indicate bias or prejudice." *Id.*

In sum, the record supports the issuance of the HRO, and Britton's assertions of error do not establish a basis for relief.

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[2] Although Britton cross-examined Thompson's social worker, he did not ask to cross-examine Thompson.

II.

If a district court finds that harassment has occurred, the court may "issue a restraining order that provides any or all of the following: (1) orders the respondent to cease or avoid the harassment of another person; or (2) orders the respondent to have no contact with another person." Minn. Stat. § 609.748, subd. 5(a)(1)-(2) (2022). In granting relief, the district court is limited to the protections allowed by the statute. *See Roer v. Dunham*, 682 N.W.2d 179, 181 (Minn. App. 2004) ("[T]his court cannot add language that is not present in the statute or supply what the legislature purposely omits or inadvertently overlooks."). The limitation on the court's authority is recognized because a person who violates a restraining order is subject to criminal penalties. *Id.*; *see* Minn. Stat. § 609.748, subd. 6 (2022) (listing criminal penalties for violating an HRO).

Britton argues that the district court violated his First Amendment rights by prohibiting him from engaging in *all* speech about Thompson, even non-harassing speech. Again, the district court broadly prohibited Britton "from speaking about [Thompson] to others." We need not address the constitutional question because the prohibition exceeds the protections authorized in the HRO statute and cannot stand for that reason. *See In re Senty-Haugen*, 583 N.W.2d 266, 269 n.3 (Minn. 1998) ("It is well-settled law that courts should not reach constitutional issues if matters can be resolved otherwise.").

The district court found that Britton's communications with Thompson's treatment provider and social worker regarding Thompson's alleged criminal behavior constituted harassment. The HRO statute authorized the district court to prohibit such communications. But the statute simply does not authorize the order prohibiting Britton

"from speaking about [Thompson] to others" even if the speech does not constitute harassment. We therefore reverse section 1.f. of the district court's order and remand for the district court to amend its order consistent with the remedies allowed under the HRO statute. Whether to reopen the record on remand is within the district court's discretion.

Affirmed in part, reversed in part, and remanded.